

No. 12609

---

United States  
Court of Appeals  
for the Ninth Circuit.

---

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,  
vs.  
SIGVALD NIELSON and MADGE NIELSON,  
Respondents.

---

Transcript of Record

---

Petitions to Review Decisions of the Tax Court  
of the United States.

FILED

NOV - 1 1950

PAUL P. O'BRIEN,  
CLERK



No. 12609

---

United States  
Court of Appeals  
for the Ninth Circuit.

---

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,  
vs.

SIGVALD NIELSON and MADGE NIELSON,  
Respondents.

---

Transcript of Record

---

Petitions to Review Decisions of The Tax Court  
of the United States.



## INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer .....	16
Appearances .....	1
Certificate of Clerk.....	72
Decision No. 21103.....	55
Decision No. 21104.....	56
Docket Entries No. 21103.....	2
Docket Entries No. 21104.....	4
Exhibit, Respondent's A—1944 Tax Return of Sigvald Nielson .....	35
Joint Motion for Consolidation of Proceedings	18
Memorandum Findings of Fact and Opinion..	48
Motion for Extension of Time to Transmit and Deliver Record .....	67
Notice as to Statement of Points to Be Relied Upon and as to Parts of Record to Be Printed .....	74
Order Enlarging Time .....	68
Petition .....	6
Exhibit A—Notice of Deficiency.....	11

INDEX	PAGE
Petition for Review No. 21103.....	57
Notice of Filing Petition for Review..60,	61
Petition for Review No. 21104.....	62
Notice of Filing Petition for Review.....	66
Proceedings .....	26
Opening Statement on Behalf of Peti- tioners .....	27
Opening State on Behalf of Respond- dent .....	31
Statement of Points .....	69
Statement Re Diminution of Record.....	71
Stipulation of Facts .....	20
Stipulation as to Parts of the Record to Be Printed .....	75

## APPEARANCES

HARRY R. HORROW, ESQ.,

ALBERT J. SHULTS, ESQ.,

MURRAY GARTNER, ESQ.,

JOSEPH L. SELIGMAN, JR., ESQ.,  
For Petitioner.

EARL C. CROUTER, ESQ.,  
For Respondent.

Docket No. 21103

SIGVALD NIELSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES

1948

Dec. 3—Petition received and filed. Taxpayer notified. Fee paid.

Dec. 6—Copy of petition served on General Counsel.

Dec. 3—Request for Circuit hearing in San Francisco, filed by taxpayer. 12/10/48 Granted.

1949

Jan. 4—Answer filed by General Counsel.

Jan. 10—Copy of answer served on taxpayer. San Francisco Calendar.

Sept. 9—Hearing set Nov. 7, 1949—San Francisco, California.

Nov. 7—Hearing had before Judge Harron on merits. (Submitted by Stipulation.) Consolidated with Dkt. 21104 for hearing. Stipulation of facts with joint motion for consolidation—granted; filed at hearing. Copies served. Appearance of Seligman, Jr., as counsel filed. Briefs due 12/22/49. Reply briefs 1/16/50.



1949

Dec. 7—Transcript of hearing 11/7/49 filed.

Dec. 19—Motion for extension to 1/21/50 to file brief, filed by taxpayer. 12/20/49 Granted.

Dec. 21—Brief filed by General Counsel.

1950

Jan. 16—Motion for extension to 2/20/50 to file opening brief, filed by taxpayer. Granted.

Jan. 26—Memorandum findings of fact and opinion rendered. Judge Harron. Decision will be entered that there are no deficiencies.

Jan. 27—Decision entered. Judge Harron. Div. 13.

Apr. 21—Petition for review by U. S. Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.

May 5—Proof of service of petition for review on taxpayer filed.

May 5—Proof of service of petition for review on counsel for taxpayer filed.

May 24—Motion for extension to July 20, 1950, to prepare and transmit record, filed by General Counsel.

May 24—Order enlarging time to July 20, 1950, to prepare and transmit the record, entered.

July 3—Statement of points filed by General Counsel with service acknowledged thereon.

1950

July 3—Statement re diminution of record filed by General Counsel with service acknowledged thereon.

Docket No. 21104

MADGE NIELSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES

1948

Dec. 3—Petition received and filed. Taxpayer notified. Fee paid.

Dec. 6—Copy of petition served on General Counsel.

Dec. 3—Request for Circuit hearing in San Francisco, filed by taxpayer. 12/10/48 Granted.

1949

Jan. 4—Answer filed by General Counsel.

Jan. 10—Copy of answer served on taxpayer. San Francisco Calendar.

Sept. 9—Hearing set Nov. 7, 1949—San Francisco, California.

Nov. 7—Hearing had before Judge Harron on merits. (Submitted by Stipulation.) Consolidated with Dkt. 21103 for hearing.

1949

Stipulation of facts with joint motion for consolidation—granted; filed at hearing. Copies served. Appearance of Seligman, Jr., as counsel filed. Briefs due 11/22/49. Reply briefs 1/16/50.

Dec. 7—Transcript of hearing 11/7/49 filed.

Dec. 19—Motion for extension to 1/21/50 to file brief, filed by taxpayer. 12/20/49 Granted.

Dec. 21—Brief filed by General Counsel.

1950

Jan. 16—Motion for extension to 2/20/50 to file opening brief, filed by taxpayer. Granted.

Jan. 26—Memorandum findings of fact and opinion rendered. Judge Harron. Decision will be entered that there are no deficiencies.

Jan. 27—Decision entered. Judge Harron. Div. 13.

Apr. 21—Petition for review by U. S. Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.

May 5—Proof of service of petition for review on taxpayer filed.

May 5—Proof of service of petition for review on counsel for taxpayer filed.

May 24—Motion for extension to July 20, 1950, to prepare and transmit record, filed by General Counsel.

1950

May 24—Order enlarging time to July 20, 1950, to prepare and transmit the record, entered.

July 3—Statement of points filed by General Counsel with service acknowledged thereon.

July 3—Statement re diminution of record filed by General Counsel with service acknowledged thereon.

---

The Tax Court of the United States

Docket No. 21103

SIGVALD NIELSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

### PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated November 18, 1948, bearing symbols IRA :90-D: WBH, and as a basis for his petition alleges as follows:

1. Petitioner herein is Sigvald Nielson, with office address at 225 Bush Street, San Francisco 4, California, and residing at 1620 Cowper Street, Palo Alto, California. Petitioner filed his federal income tax return for the calendar year 1944 on a

cash receipts and disbursements basis with the Collector of Internal Revenue for the First District of California, at San Francisco, California.

2. The amount of tax in dispute is \$405.74, federal income tax for 1944.

3. The notice of deficiency, a copy of which is attached hereto marked "Exhibit A" and made a part of this petition, was mailed to petitioner on November 18, 1948.

4. The determination of taxes set forth in said notice of deficiency is based on the following errors:

(a) The Commissioner erred in determining that the petitioner's one-half community interest in his distributive share of \$2,504.16 in the fee of \$43,425 received by the firm of Pillsbury, Madison & Sutro from The Equitable Life Assurance Society of the United States was not subject to tax under the provisions of section 107 of the Internal Revenue Code.

(b) The Commissioner erred in holding that the petitioner's one-half community interest in his distributive share of said fee was subject to the normal tax and surtax rates applicable to the year 1944 instead of to a tax of \$97.44 under the provisions of section 107 of the Internal Revenue Code.

(c) The Commissioner erred in determining a deficiency in federal income tax for the year 1944 in the amount of \$405.74.

5. The facts upon which petitioner relies as a basis for this petition are as follows:



(1) Petitioner herein during all of the times herein mentioned was an attorney at law engaged in the practice of law in San Francisco, California. From November, 1935, to January 1, 1939, petitioner was employed by the law partnership of Pillsbury, Madison & Sutro, 225 Bush Street, San Francisco, California. His compensation during said period was a fixed salary. Thereafter, from January 1, 1939, to May 1, 1942, petitioner was employed by said partnership with his compensation measured by a salary plus a percentage of the net profits of the partnership in each calendar year. On May 1, 1942, petitioner became a partner in said partnership, entitled to a distributive share of the net profits of said partnership.

(2) From August 4, 1935, up to and including May, 1943, said partnership rendered legal services to The Equitable Life Assurance Society of the United States. Petitioner, in his individual capacity as an employee of said partnership, from November, 1935, until May 1, 1942, and thereafter until completion of the said services, as a member of said partnership, participated in the performance of said services. In December, 1944, said partnership received a fee of \$43,425 from said The Equitable Life Assurance Society of the United States for said legal services. No income had been received by said partnership or by petitioner prior thereto by reason of said services rendered by said partnership. The distributive share of petitioner in said fee as a member of the partnership was \$2,504.16,

of which one-half, or \$1,252.08, was petitioner's share of the community income.

(3) In arriving at the deficiency involved in this proceeding the Commissioner erroneously held that said amount of \$1,252.08 was not subject to taxation under the provisions of section 107, on the ground that petitioner's right to receive income based on the services rendered to The Equitable Life Assurance Society of the United States did not exist for a period of thirty-six months or more.

(4) Petitioner, from January 1, 1939, to May 1, 1942, as an employee of said partnership, and from May 1, 1942, up to and including December, 1944, as a member of said partnership, participated in its net profits, and was from January 1, 1939, to December 31, 1944, entitled to receive income resulting from the services rendered by said partnership to The Equitable Life Assurance Society of the United States, and the community interest of petitioner in his distributive share of the income so received in 1944 was subject to the provisions of section 107 of the Internal Revenue Code. The tax attributable to said income, had it been included in the gross income of petitioner returnable over the period during which said services were rendered, is \$97.44 and the Commissioner erroneously determined that said income was subject to the normal tax and surtax applicable to the year 1944 in lieu of said tax of \$97.44.

Wherefore, petitioner prays that this court may hear this proceeding, redetermine the deficiency in-

volved herein by correction of the errors alleged herein, and grant such other relief as may be proper.

Dated: San Francisco, California, November 29, 1948.

/s/ HARRY R. HORROW,

/s/ ALBERT J. SHULTS,

/s/ MURRAY GARTNER,

Attorneys for Petitioner.

State of California,

City and County of San Francisco—ss.

Sigvald Nielson, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ SIGVALD NIELSON.

Subscribed and sworn to before me this 29th day of November, 1948.

[Seal] /s/ JOHN G. STAMP,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires September 28, 1952.



EXHIBIT A

SN-IT-1

Form 1230 (Rev. Sept. 1945)

Treasury Department  
Internal Revenue Service  
74 New Montgomery Street  
San Francisco 5, California

Office of  
Internal Revenue Agent in Charge

San Francisco Division  
IRA:90-D:WBH

Nov. 18, 1948

Mr. Sigvald Nielson  
225 Bush Street  
San Francisco 4, California

Dear Mr. Nielson:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1944, discloses a deficiency of \$405.74, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,  
Commissioner.

By /s/ F. M. HARLESS,  
Internal Revenue Agent in  
Charge.

Enclosures:

Statement

Form 1276

Form Waiver

Statement

San Francisco

IRA :90-D:WBH

Mr. Sigvald Nielson

225 Bush Street

San Francisco 4, California

Tax Liability for the Taxable Year Ended December 31, 1944.

Deficiency

Income tax .....\$405.74

In making this determination of your income tax liability, careful consideration has been given to your protest filed May 3, 1948, and to the statements made at the conference held on June 7, 1948.

A copy of this letter and statement has been mailed to your representative, Messrs. Harry R. Horrow, Douglas Erskine and Murray Gartner, c/o Pillsbury, Madison & Sutro, 225 Bush Street, San Francisco, California, in accordance with the authority contained in the power of attorney executed by you and on file in this office.

Adjustments to Net Income

Net income as disclosed by return, page 4,

line 3 .....\$11,245.58

Unallowable deductions and additional income:

(a) Partnership income ..... 1,252.08

---

Net income as adjusted.....\$12,497.66

## Explanation of Adjustments

(a) It is disclosed that you received the amount of \$26,404.34 as your distributive share of income from the law partnership of Pillsbury, Madison & Sutro, San Francisco, California, of which your one-half community share is \$13,202.17. The amount of \$11,950.09 was reported as taxable income in the year 1944 and the remainder, \$1,252.08 was excluded from taxable income in the year 1944 as representing income for services attributable to prior years. You claimed relief under the provisions of section 107(a) of the Internal Revenue Code and added to your total tax for the year 1944 the amount of \$97.44, representing tax on income of \$1,252.08 attributable to prior years.

It is noted that you were employed by the partnership on a straight salary basis from November, 1935, to May 1, 1942, and on January 1, 1939, your compensation was increased by a small percentage of the profits. On May 1, 1942, you became a partner in the firm, thereafter participating in the net profits on a pro rata basis.

In December, 1944, the partnership received a fee of \$43,425.00 from the Equitable Life Insurance Company for services rendered for the period August 4, 1935, up to and including May, 1943, which period is more than thirty-six calendar months. As a member of the partnership you received \$2,504.16 as your share of the fee, of which your one-half community share is \$1,252.08.

It is held that prior to May 1, 1942, the income re-

ceived by you was that of an employee of the partnership; and prior to that date you did not have the right to participate in the fees received by the partnership from the Equitable Life Insurance Company.

In order to qualify for relief under section 107(a), *supra*, your right to receive income for prior services must exist for a period of thirty-six months or more. Since you were a member of the partnership for not more than thirty-two months (May 1, 1944, to December, 1944), it is held that you do not qualify for relief under the provisions of section 107(a) of the Internal Revenue Code. The amount of \$1,252.08 is held to represent taxable partnership income for the year 1944. The tax of \$97.44 on income attributable to prior years is, therefore, eliminated from your tax liability for the year 1944.



## Computation of Tax

Net income .....	\$12,497.66	
Less: Surtax exemption .....	1,500.00	
Surtax net income .....	<u>\$10,997.66</u>	
Surtax on \$10,997.66 .....		\$3,019.11
Net income .....	\$12,497.66	
Less: Normal tax exemption .....	500.00	
Normal tax net income .....	<u>\$11,997.66</u>	
Normal tax, 3% of \$11,997.66 .....		359.93
Total tax .....		<u>\$3,379.04</u>
Add: (a) Tax attributable to prior years under section 107(a) of the In- ternal Revenue Code .....		0.00
Correct income tax liability .....		<u>\$3,379.04</u>
Income tax disclosed by return, page 1 - line 6 (Original, Account No. 9083227 First California District) .....		2,973.30
Deficiency of income tax .....		<u>\$ 405.74</u>
Received and filed T.C.U.S. December 3, 1948.		
Served December 6, 1948.		

---

[Title of Tax Court and Cause.]

Docket No. 21103

## ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1, 2, 3. Admits the allegations contained in paragraphs 1, 2, and 3 of the petition.

4. (a), (b), (c). Denies that the determination of tax set forth in the notice of deficiency is based upon error as alleged in subparagraphs (a), (b) and (c) of paragraph 4 of the petition.

5. (1). Denies the allegations contained in subparagraph (1) of paragraph 5 of the petition, except it is admitted that during all of the times herein mentioned the petitioner was an attorney at law engaged in the practice of law in San Francisco, California.

(2). Denies the allegations contained in subparagraph (2) of paragraph 5 of the petition, except it is admitted that from August 4, 1935, up to and including May, 1943, the said partnership rendered legal service to The Equitable Life Assurance Society of the United States, and further admits that in December, 1944, the said partnership received a fee of \$43,425.00 from the said Equitable Life Assurance Society of the United States, and further admits that the distributive share of the petitioner in said fee as a member of the partnership was \$2,504.16, of which one-half was the petitioner's share of the community income.

(3), (4). Denies the allegations contained in subparagraphs (3) and 4) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.

T. M. MATHER,  
W. J. McFARLAND,  
Special Attorneys,  
Bureau of Internal Revenue.

Received and Filed T.C.U.S. January 4, 1949.

---

[Title of Tax Court and Causes.]

Docket No. 21103 and 21104

JOINT MOTION FOR CONSOLIDATION  
OF PROCEEDINGS

Come now the parties in the above-entitled proceedings, by their respective counsel, and move for an order of the Court to consolidate for hearing, briefing and opinion said two proceedings in the case of Sigvald Nielson, Docket No. 21103, and the case of Madge Nielson, Docket No. 21104, and in support of this motion, the parties state as follows:

1. The case of Sigvald Nielson, Docket No. 21103, is on the hearing calendar at San Francisco commencing November 7, 1949, and involves the peti-



tioner's income tax liability for the calendar year 1944.

2. The case of Madge Nielson, Docket No. 21104, is on the same hearing calendar at San Francisco and involves the petitioner's income tax liability for the same taxable year.

3. Petitioners in the two cases are husband and wife and the issues of fact and law involved are identical.

4. The consolidation of these proceedings is in the interest of all concerned.

Wherefore, the parties jointly pray that the Court will grant this motion.

/s/ HARRY R. HAMM,

/s/ JOSEPH L. SELIGMAN, JR.,  
Counsel for Petitioners.

/s/ CHARLES OLIPHANT,  
E.C.C.

Chief Counsel, Bureau of  
Internal Revenue.

Served November 7, 1949.

Filed T.C.U.S. November 7, 1949.

Granted November 7, 1949. Marion J. Harron,  
Judge.

[Title of Tax Court and Causes.]

Docket No. 21103 and 21104

### STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the following fact shall be taken to be true and received as evidence for all purposes of this proceeding, subject to the right of either party to introduce any further evidence not inconsistent with or contrary to the facts herein stipulated.

1. Petitioners are individuals residing at 1620 Cowper Street, Palo Alto, California. They were married on September 27, 1924, and since 1929 they have at all times resided in and been domiciled in the State of California as husband and wife.

2. Petitioners each filed individual Federal income tax returns for the calendar year 1944 on a cash receipts and disbursements basis with the Collector of Internal Revenue for the First District of California.

3. The taxes in controversy herein are Federal income taxes for the year 1944 in the amount of \$405.74 in Docket No. 21103 and \$450.45 in Docket No. 21104.

4. Notices of deficiency, copies of which were attached to each petition herein as Exhibit A, were mailed to petitioners on November 18, 1948.

5. Petitioner Sigvald Nielson was employed as an attorney at law by the law partnership of Pills-

bury, Madison & Sutro, 225 Bush Street, San Francisco, California, in November, 1935, and has ever since been engaged in the active practice of law for and with said partnership. From the date of his employment to January 1, 1939, Sigvald Nielson received a fixed salary as compensation for his services, and thereafter until May 1, 1942, he received, during each calendar year, in addition to his fixed salary, a fixed percentage of the net profits of said partnership as follows:

1939 .....	0.463%
1940 .....	0.526%
1941 .....	0.631%
January 1, 1942, to April 30, 1942..	0.631%

On May 1, 1942, Sigvald Nielson became a partner in said partnership, entitled thereafter to distributive shares of its net profits, and at all times material herein since said date he has been a partner in said partnership. Such distributive shares were as follows:

May 1, 1942, to December 31, 1942.	2.314%
1943 .....	4.573%
January 1, 1944, to April 30, 1944..	3.5 %
May 1, 1944, to December 31, 1944	5.766%

6. From August 4, 1935, up to and including May, 1943, a period of ninety-four (94) months, said partnership rendered legal services to The Equitable Life Assurance Society of the United

States, hereinafter referred to as "Equitable," in connection with litigation growing out of the imposition by the State of California on a tax on gross premiums from insurance and annuities. These services were entirely distinct and separate from other legal services then being rendered to Equitable by said partnership and after the completion of these special services, said partnership received from Equitable \$43,425 as compensation for said services. Said compensation was received in a lump sum in December, 1944, and no other compensation was ever received by said partnership from Equitable for said services.

7. For many years past and during all of the years material herein, all fees received for legal services by said partnership have been pooled in a single fund, which has been first used to pay all expenses. The balance, representing the net profits of the partnership, has been distributed periodically among all of the partners and all of the employees entitled to share therein. The amount of such distributions has been computed on the basis of a quarterly allocation to the profit-sharing employees and a calendar year allocation to the partners of the profits of the partnership, all in accordance with the percentage shares agreed upon by the partners and in effect during the period in which the net profits were received. Each partner and profit-sharing employee has shared in such division of all profits received during any period in which he has been entitled to a share of the partnership profits accord-



ing to such agreement of the partners; conversely, when a partner or employee has ceased to be such by death or retirement or otherwise, he has not shared in any profit or profits received after the month in which the cessation has occurred.

8. At all times material herein, said partnership kept its books of account and filed its income tax returns on a calendar year and cash receipts and disbursements basis.

9. Sigvald Nielson's distributive share of said partnership's net income for the year 1944 included his distributive share in said Equitable fee in the amount of \$2,504.16. One-half of said distributive share, or \$1,252.08, was the community income of Sigvald Nielson and the other one-half was the community income of his wife, Madge Nielson.

10. In their Federal income tax returns for 1944 petitioners each claimed the benefits of section 107(a) of the Internal Revenue Code and reported therein the additional income taxes attributable to their respective shares of the aforesaid compensation from Equitable, had such shares been included in their gross income ratably over the preceding period of ninety-four (94) months from August, 1935, to May, 1943, during which said services were rendered by said partnership. Such returns will be offered in evidence jointly by the parties as separate exhibits herein, and there is no controversy between the parties in these proceedings regarding the taxable net income, exemptions, credits and taxes previously paid for the years 1935 to 1943, inclusive, of

each petitioner as shown in the schedule attached to each of said 1944 returns. The respondent disallowed the petitioners' claims for the benefit of section 107(a) of the Internal Revenue Code for reasons set forth in the statements attached to the respective deficiency notices.

11. In auditing the income tax returns of the other partners of said partnership for the year 1944, respondent has allowed the application of section 107(a) of the Internal Revenue Code to the distributive share in said compensation received from Equitable in 1944 of each partner who claimed the benefits of Section 107(a) if he was a partner in said partnership for more than three years prior to December, 1944.

12. Following the filing of petitions in each of these proceedings on December 3, 1948, each petitioner, on December 8, 1948, executed a Waiver of Restrictions on Assessment and Collection of Deficiency in Tax on Treasury Department Form 870 for the calendar year 1944 in the amount of \$405.74 for petitioner Sigvald Nielson and in the amount of \$450.45 for petitioner Madge Nielson. Said waivers were filed with the Internal Revenue Agent in Charge, San Francisco, on December 9, 1948, together with a letter of transmittal, which stated, in part, as follows:

“In order to stop the running of interest on any liability that may be determined by the Tax Court in these proceedings the taxpayers wish to permit the assessment and collection of the

amounts of the deficiencies determined, but subject to the final determination of the Tax Court in said proceedings. Herewith for that purpose are forms 870 executed by said taxpayers.”

The deficiencies involved in these proceedings were duly assessed, and on March 17, 1949, Sigvald Nielson paid the amount of tax so assessed of \$405.74, together with interest in the sum of \$92.89, and Madge Nielson paid the amount of tax so assessed of \$450.45, together with interest in the sum of \$103.13, to the Collector of Internal Revenue at San Francisco, California.

Dated: November 3, 1949.

/s/ SIGVALD NIELSON,  
/s/ HARRY R. HORROW,  
/s/ JOSEPH L. SELIGMAN, JR.,  
Counsel for Petitioners.

/s/ CHARLES OLIPHANT,  
E.C.C.

Chief Counsel, Bureau of Internal Revenue, Counsel  
for Respondent.

Filed T.C.U.S. November 7, 1949.

The Tax Court of the United States

Docket No. 21103, Docket No. 21104

SIGVALD NIELSON, MADGE NIELSON,  
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Monday, November 7, 1949.

Met, pursuant to notice, at 12:50 o'clock p.m.  
Before: Hon. Marion J. Harron,  
Judge.

Appearances:

HARRY R. HORROW,  
225 Bush Street, San Francisco, California,  
Appearing on behalf of the Petitioners.

EARL C. CROUTER,  
(Hon. Charles Oliphant, Chief Counsel,  
Bureau of Internal Revenue)  
Appearing for the Respondent.

---

### PROCEEDINGS

The Court: We will take up the Nielson cases first, Docket No. 21103 and -04.

Mr. Horrow: Harry R. Horrow, for Petitioners.

Mr. Cruter: Earl C. Cruter, for Respondent in both cases.

Mr. Horrow: If you Honor please, the issue in



both cases is identical. I would like at this time to file a joint motion for consolidation.

The Court: The motion is granted.

Opening Statement on Behalf of Petitioners  
By Mr. Horrow:

The issue here arises under Section 107 of the Internal Revenue Code. It involves the year 1944. That section permits taxpayers to pay the taxes attributable to income which is covered by that section that would have been payable over the period during which the services giving rise to that income were performed, in lieu of the tax that would have been payable during the taxable year on that income in which it was received.

There is no dispute, your Honor, as to the fact that all of the conditions requisite to the application of Section 107 were complied with in this case, except in one respect; namely, that the Petitioner, Sigvald Nielson, was not a member of the law partnership for a period of more than 36 months. The income in question was a fee that was received by the partnership during the year 1944. The services which were rendered in the performance of that fee took place over a period of seven or eight years. The compensation was paid in a lump sum on conclusion of the performance of the services. There is no dispute as to the amount of income with respect to the fee to which the Petitioners here are chargeable. The Respondent, however, has disallowed the benefits of 107 to these Petitioners, solely on the ground that the Petitioner Sigvald Nielson, was not a member of the partnership for more than 36 months.

All of the facts, your Honor, are stipulated with the exception of two exhibits, which will be the returns of the Petitioners in these cases.

I would like to file at this time the stipulation of facts that the parties have entered into.

The Court: Are there any exhibits attached to the stipulation?

Mr. Horrow: There are none, your Honor. The only exhibits will be the returns that are entered in evidence as joint exhibits.

The Court: The stipulation and exhibits will be received and made a part of the record.

Mr. Horrow: I believe that states our case, your Honor.

The Court: How much of this fee was paid to Mr. Nielson. I understand, of course, that his wife is the Petitioner in the case only because the income was a community income?

Mr. Horrow: That is correct.

The Court: And the issue relates only to Mr. Nielson. Now, from what you say, it would appear that the firm in which Mr. Nielson was for part of the time at least an associate and not a member of the firm, received the fee?

Mr. Horrow: That is correct.

The Court: Mr. Nielson was counsel assigned to that particular case? Was he paid on an annual basis or was he paid on an annual basis plus bonus, and if he was paid by a bonus, did his bonus represent part of this fee? Can you trace this fee directly into the compensation to him?

Mr. Horrow: The stipulation, your Honor, cov-

ers the manner of compensation to Petitioner Sigvald Nielson during this entire period. The deficiency notice determines the portion of the fee which is taxable to each Petitioner.

The Court: What do you mean by "Each Petitioner?"

Mr. Horrow: The income in question is community income.

The Court: Well, could you conveniently translate that, turn that around, into just the amount of the income that its attributable to the services of Mr. Nielson? Let's forget about Mrs. Nielson. She had nothing to do with the matter.

Mr. Horrow: I will read from the deficiency notice: "As a member of the partnership, you have received \$2,504.16, as your share of the fee, of which your one half community share is \$1,252.08." A similar statement was made in the deficiency notice addressed to Mrs. Nielson, except, of course, she was not referred to as a member of the partnership.

The Court: Now, it is stipulated on Page 3 of this stipulation that in certain years in addition to a fixed salary Mr. Nielson received a certain percentage of the net profits of the law partnership by which he was employed. Now, this lump sum fee that was received from the Equitable Life Assurance Society, was that, that fee, was the total figure more than \$43,000?

Mr. Horrow: No. That was the only amount that was received by the company as its fee for the services rendered.

The Court: Just \$43,000?

Mr. Horrow: That is correct.

The Court: Did Mr. Nielson receive all of that?

Mr. Horrow: The amount that he received as a member of the partnership is in the deficiency notice and is stipulated to be \$2,504.16, of which one half was his community share.

The Court: Now, that amount was arrived at by taking one of these percentages, was it, Mr. Horrow?

Mr. Horrow: That is correct, your Honor.

The Court: He was entitled to a certain percentage of the partnership profits?

Mr. Horrow: That is correct.

The Court: And applying that percentage to the fee, that was the way that he received the part of the fee? Now, what is the point, Mr. Horrow, that seems to be the only point in the case in your mind? The Respondent takes the view that Mr. Nielson became a member of the partnership, was a member of the partnership, for only a certain period of time. As I understand the statute, any taxpayer who receives compensation in one year for services that extend over several years in the past is entitled to allocate, so to speak, part of that compensation to the other years. Now, that would be true whether Mr. Nielson was a member of the partnership or wasn't, isn't that correct?

Mr. Horrow: That is our understanding.

The Court: What is the point here about? You say the only reason that this was done was because Mr. Nielson was not a member of the partnership the whole time. Is that really your understanding of it?



Mr. Horrow: That is my understanding of it. I would prefer that counsel for the Respondent state the Respondent's position in the matter. That is my understanding of it.

The Court: The reason I just asked you these questions about the facts is that it would seem to be proper for a taxpayer to allocate over several years the amount of compensation which he received in one year for services which extended over past years. This is just a matter of principal, I take it, because the amount of the fee allocated to Mr. Nielson is about \$2,000?

Mr. Horrow: That is correct, your Honor.

The Court: And the question is whether that \$2,000 is to be included income in one year or prorated over earlier years, is that right?

Mr. Horrow: That is right. This is really a test case of this point. It is involved in subsequent years with respect to other fees for other partners and we are in entire agreement with your Honor's position. We are at a loss to find any provision of the statute which justifies the Respondent's position in this case.

Opening Statement on Behalf of Respondent  
By Mr. Crouter:

If your Honor please, I believe the general factual situation in both of these proceedings has been quite accurately stated as presented by Mr. Horrow and the situation as brought out by your Honor's questions and discussion.

I would like to call the Court's attention to the statement contained in the paragraph on the second

page attached to the deficiency notice, down about the third paragraph, sort of bringing this question to a head. The statement says among other things the following: "It is held that prior to May 1, 1942, the income received by you was that of an employee of the partnership; and prior to that date you did not have the right to participate in the fees received by the partnership from the Equitable Life Assurance Company."

The Court: Emphasis there on the point "right to receive"?

Mr. Crouter: Yes, the right, and the status as an employee in the partnership firm.

The Court: I wonder if I may ask you a question right here. Possibly it would show it in this. Mr. Nielson, as I understand it, became a member of this firm in one of these taxable years, did he?

Mr. Crouter: It is stipulated.

The Court: In what year?

Mr. Crouter: Page 3.

The Court: That is all right.

Mr. Crouter: May 1, 19——

The Court: Just answer my question. When did he become a member of this firm?

Mr. Crouter: May 1, 1943, and the taxable year is 1944. The statute requires three years or more of an earning period, and under the regulations and rulings, GCM-25795, continued in the 1948 Cumulative Bulletins, 1948-2, Page 61. The rulings have covered situations rather close to this and it is Respondent's position that the case of these Petitioners is not within either the statute or the regulations in

allowing, if I may refer to it as such, a tacking on of the period when the individual or taxpayer was a mere employee and had an employee's status, to tack that on to the period when the individual admittedly became a member of the partnership.

Now, I think, your Honor——

The Court: Your point is then, Mr. Crouter, that the taxpayer had no right to participate in any fees?

Mr. Crouter: That is correct.

The Court: Prior to the time that he became a member of the firm, is that right?

Mr. Crouter: Yes.

The Court: He might have worked on this matter but he would just be paid a salary? He wouldn't get any part of the fee paid by the Equitable Life Assurance Society as such, is that what you mean?

Mr. Crouter: That is correct, and in our stipulated facts we will show to the Court that the taxpayer was compensated under the salary arrangement and a participation in net profits of the partnership right up to the period when he became a partner, May 1, 1942, so that the only period of the earning of the partnership of this fee when the Petitioner Sigvald Nielson was a member, is less than three years, and if the Court should hold that that is a fact as stipulated and that it requires a period of three years or more, then Petitioners admittedly are not under the statute.

Now, this case, I believe, these pair of cases, do raise the question in a rather striking manner, in

that the returns and the facts show that the Petitioners would relate this \$2500.00 way back, part of it to 1935 back to years much before the year 1942 when the Petitioners became, or the Petitioner Sigvald Nielson became, a member of the partnership. I do not want to argue the case but I do believe that the fact as to the employment status both as to a mere employee, as an employee plus a participation in earnings, are fully covered in our stipulated facts and they also show the admitted facts as to what he earned and did and received during the latter period when a partner. But the Respondent contends that is not sufficient. I believe that on an analysis of similar cases, that the facts will show here that the taxpayers in the position of these petitioners were never within the contemplation of Congress intended to give relief under Section 107 of the Internal Revenue Code.

If that is enough from the standpoint of the Court's questions, I would just like to submit as an exhibit in the case the 1944—this is the photostat of the 1944 return of Sigvald Nielson.

The Court: That is received as Respondent's Exhibit A.

Mr. Crouter: Could we make it a joint 1-A?

The Court: It is not necessary. Exhibit A.

(Whereupon the document was marked for identification as Exhibit A and was received in evidence.)







Do not use this page if your income is wholly from salaries, wages, dividends, and interest

**Schedule A.—INCOME FROM ANNUITIES OR PENSIONS**

1. Cost of annuity (total amount you paid in)	\$	4. Total amount received this year	\$
2. Amount received tax-free in prior years		5. Excess, if any, of line 4 over line 3	
3. Remainder of your cost (line 1 less line 2)	\$	6. Enter line 5, or 3 percent of line 1, whichever is greater	\$

**Schedule B.—INCOME FROM RENTS AND ROYALTIES**

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (explain in Schedule G)
	\$	\$	\$	\$
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	\$	\$	\$	\$

**Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION.** (Farmers should obtain Form 1040F)

(State (1) nature of business ; (2) business name )

1. Total receipts	\$	OTHER BUSINESS DEDUCTIONS	
COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Enter the letters "C," or "C or M," on line 2 and 6 if inventories are valued at either cost, or cost or market whichever is lower)		11. Salaries and wages not included as "Labor"	\$
2. Inventory at beginning of year	\$	12. Interest on business indebtedness	
3. Merchandise bought for sale		13. Taxes on business and business property	
		14. Losses (explain in Schedule G)	
		15. Bad debts arising from sales or services	
		16. Depreciation, obsolescence and depletion	

**Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES**

Name and Address of partnership, etc.: **Amount, \$11,950.03**  
**PILLSBURY, MADISON & SUTRO,**  
**225 Bush Street,**  
**San Francisco 4**

**Business expenses:**

Bar Association dues \$ 14.  
 Entertainment and miscellaneous 249.29 263.29  
**\$11,686.74**

Total

**Total income from above sources** (Enter as item 4, page 1)

**\$11,686.74**

**Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C**

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		\$	\$	\$	\$			\$

**Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C**

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
		\$			\$





Do not itemize deductions if—(1) You determine your tax from the tax table on page 2, or  
 (2) Your total income is \$5,000 or more and you claim the \$500 standard deduction.  
 If husband and wife living together at end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1040, and must also itemize deductions.

### DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.

Amount

#### Contributions

Allowable Contributions (not in excess of 15 percent of item 5, page 1)

#### Interest

Total Interest

#### Taxes

Total Taxes

#### Losses from fire, storm, shipwreck, or other casualty, or theft

Total Allowable Losses (not compensated by insurance or otherwise)

#### Medical and dental expenses

Net Expenses (not compensated by insurance or otherwise)

Enter 5 percent of item 5, page 1, and subtract from Net Expenses

Allowable Medical and Dental Expenses. See Instruction for limitation.

#### Miscellaneous (including alimony, amortizable bond premium, special deduction for the blind, etc.)

Total Miscellaneous Deductions

TOTAL DEDUCTIONS

### TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 2

1. Enter amount shown in item 5, page 1. This is your Adjusted Gross Income	\$ 11,745	58
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is \$5,000 or more and deductions are not itemized, enter the standard deduction of \$500)	500	
	\$ 11,245	58
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	1,500	
	\$ 9,745	58
4. Enter your Surtax Exemptions (\$500 for each person listed in item 1, page 1)	2,553	50
5. Subtract line 4 from line 3. Enter the difference here. This is your Surtax Net Income	11,245	58
6. Use the Surtax Table in instruction sheet to figure your Surtax on amount entered on line 5. Enter the amount here	500	
7. Copy the figure you entered on line 3, above. (If line 3 includes partially tax-exempt interest, see Tax Computation Instructions)	10,745	58
8. Enter your Normal-Tax Exemption (\$500 if return includes income of only one person; otherwise see Tax Computation Instructions)	322	36
9. Subtract line 8 from line 7, and enter the difference here		
10. Enter here 3 percent of line 9. This is your Normal Tax		
11. Add the figures on lines 6 and 10, and enter the total here. (If alternative tax computation is made on separate Schedule D, enter here tax from line 15 of Schedule D)	\$ 2,875	86
If you used the \$500 standard deduction in line 2, disregard lines 12, 13, & 14, and copy on line 15 the same figure you entered on line 11		
12. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)		
13. Enter here any income tax paid at source on tax-free covenant bond interest		
14. Add the figures on lines 12 and 13 and enter the total here		
15. Subtract line 14 from line 11. Enter the difference here and in item 6, page 1. This is your tax		





Form 872

Duplicate

Consent Fixing Period of Limitation Upon  
Assessment of Income and Profits Tax

....., 19....

In pursuance of the provisions of existing Internal Revenue Laws Sigvald Nielson, a taxpayer (or taxpayers) of 225 Bush Street, San Francisco, California, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended December 31, 1944, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1949, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

/s/ SIGVALD NIELSON,

Taxpayer.<sup>1</sup>

[Seal<sup>2</sup>] /s/ GEO. J. SCHOENEMAN,

Commissioner of Internal  
Revenue.

By /s/ R. L. S.

Date: 12/24/47.

---

<sup>1</sup>This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically

### Power of Attorney

Know All Men by These Presents:

That Sigvald Nielson of San Francisco, California, does by these presents hereby make, constitute and appoint Harry R. Horrow, Douglas Erskine and Murray Gartner, of the firm of Pillsbury, Madison & Sutro, San Francisco, California, and each of them, his true and lawful attorneys, to appear for him and represent him before the Treasury Department in connection with his federal income taxes for the year 1944 with full power of substitution and revocation; giving his said attorneys, and each of them, full power to do everything whatsoever requisite and necessary to be done in the premises, and to receive refund checks, execute waivers of the

---

authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return of a Husband and Wife was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

---

<sup>2</sup>If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

statute of limitations, and execute closing agreements, as fully as the undersigned might do if done in his own capacity, at any time subsequent to the date hereof and prior to the revocation hereof.

All powers of attorney for this purpose heretofore filed or executed by the undersigned are hereby revoked.

In Witness Whereof, the undersigned has caused this instrument to be executed and signed by his own hand this 30th day of April, 1948.

/s/ SIGVALD NIELSON.

[Stamped]: Received May 3, 1948. Internal Revenue Agent in Charge, San Francisco.

State of California,

City and County of San Francisco—ss.

On this 30th day of April, 1948, before me, Chalmer Munday, a notary public in and for said city and county and state, residing therein, duly commissioned and sworn, personally appeared Sigvald Nielson, known to me to be the person who executed the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the city

and county and state aforesaid the day and year in this certificate first above written.

/s/ CHALMER MUNDAY,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Stamped]: Received May 3, 1948. Internal  
Revenue Agent in Charge, San Francisco.

San Francisco, California.

April 30th, 1948.

This is to certify that we have not entered into a contingent or partially contingent fee agreement for the representation before the Treasury Department of Sigvald Nielson in connection with his federal income taxes for the year 1944 under the terms of the power of attorney attached hereto.

/s/ HARRY R. HORROW,

/s/ DOUGLAS ERSKINE,

/s/ MURRAY GARTNER.

[Stamped]: Received May 3, 1948. Internal  
Revenue Agent in Charge, San Francisco.

Addendum to Federal Income Tax Return for Sigvald Nielson and  
Madge Nielson Relating to Income Subject to Section 107(a)  
of the Internal Revenue Code

In December, 1944, the firm of Pillsbury, Madison & Sutro received payment of the sum of \$43,425 as compensation for personal services covering a period of more than 36 months from the beginning to the completion of such services, such sum being in excess of 80 per cent of the total compensation for such personal services. The share of the taxpayer, Sigvald Nielson, and his wife, Madge Nielson, amounted to \$2,504.16, which is divided equally between them as community property and distributed ratably over the period during which the services were rendered, namely,



August 4, 1935, to and including May of 1943, and results in a tax of

\$97.44 to S. Nielson

\$62.51 to Madge Nielson

in addition to that shown on the return herewith dealing with income returnable in 1944.

Details of computation:

Year	Joint Return	S. Nielson	Madge Nielson
1935.....	\$ .74		
1936.....	---		
1937.....	11.50		
1938.....	11.50		
1939.....	11.50		
1940.....	---	\$ 6.34	\$ 6.34
1941.....	---	20.14	20.14
1942-1943.....	---	35.72	36.03

#### 1935 Joint Return

Prior reported income .....	\$3,998.34
Additional—Sec. 107(a) I.R.C. ....	133.20
Revised income .....	4,131.54
Exemptions and credits .....	4,113.15
Balance subject to normal tax .....	18.39
4% normal tax .....	.74
Tax previously paid .....	---
Tax now payable .....	\$ .74

#### 1936 Joint Return

Prior reported income .....	\$3,525.13
Additional—Sec. 107(a) I.R.C. ....	319.68
Revised income .....	3,844.81
Exemptions and credits .....	4,052.50
Subject to normal tax .....	---

#### 1937 Joint Return

Prior reported income .....	\$4,761.14
Additional—Sec. 107(a) I.R.C. ....	319.68
Revised income .....	5,080.82
Exemptions and credits .....	4,208.08
Balance subject to normal tax .....	872.74
4% normal tax .....	34.90
Tax previously paid .....	23.40
Tax now payable .....	\$ 11.50

## 1938 Joint Return

Previously reported income .....	\$5,261.23
Additional—Sec. 107(a) I.R.C. ....	319.68
Revised income .....	5,580.91
Exemptions and credits .....	4,258.09
Balance subject to normal tax .....	1,322.82
4% normal tax .....	52.91
Tax previously paid .....	41.40
Tax now payable .....	\$ 11.51

## 1939 Joint Return

Previously reported income .....	\$6,693.05
Additional—Sec. 107(a) I.R.C. ....	319.68
Revised income .....	7,012.73
Exemptions and credits .....	4,401.27
Balance subject to normal tax .....	2,611.46
4% normal tax .....	104.45
Tax previously paid .....	92.95
Tax now payable .....	\$ 11.50

## 1940 Return

	Sigvald Nielson	Madge Nielson
Previously reported income .....	\$3,701.42	\$3,701.42
Additional—Sec. 107(a) I.R.C. ....	159.84	159.84
Revised income .....	3,861.26	3,861.26
Exemptions and credits .....	1,986.12	1,986.12
Balance subject to normal tax .....	1,875.14	1,875.14
4% normal tax .....	75.00	75.00
Defense tax .....	7.50	7.50
Revised total taxes .....	82.50	82.50
Tax previously paid .....	76.16	76.16
Tax now payable .....	\$ 6.34	\$ 6.34

1941 Return

	Sigvald Nielson	Madge Nielson
Previously reported income .....	\$1,084.83	04,084.83
Additional—Sec. 107 (a) I.R.C. ....	159.84	159.84
Revised income .....	4,244.67	4,244.67
Exemptions and credits .....	1,774.46	1,774.46
Balance subject to normal tax .....	2,470.21	2,470.21
4% normal tax .....	98.80	98.80
Tax previously paid .....	93.05	93.05
Additional normal tax .....	5.75	5.75
Revised surtax net income .....	2,894.67	2,894.67
Surtax .....	200.52	200.52
Paid .....	186.13	186.13
Balance due on surtax .....	14.39	14.39
Total balance due .....	\$ 20.14	\$ 20.14

1942 Return

Previously reported income .....	\$7,349.25	\$7,349.25
Additional—Sec. 107 (a) I.R.C. ....	159.84	159.84
Revised income .....	7,509.09	7,509.09
Exemptions and credits .....	1,125.00	1,125.00
Surtax net income .....	6,384.09	6,384.09
Earned income credit .....	750.91	750.91
Normal tax net .....	5,633.18	5,633.18
Normal 6% tax .....	337.99	337.99
Surtax .....	1,072.18	1,072.18
Total revised tax .....	\$1,410.17	\$1,410.17

## 1943 Return

	Sigvald Nielson	Madge Nielson
Previously reported .....	\$10,205.13	\$10,205.13
Additional—Sec. 107(a) I.R.C. ....	66.60	66.60
Revised income .....	10,271.73	10,271.73
Personal exemption .....	1,125.00	1,125.00
Surtax net income .....	9,146.73	9,146.73
Earned income credit .....	1,027.17	1,027.17
Normal tax net .....	8,118.56	8,118.56
Surtax: 8,000.00 .....	1,460.00	1,460.00
1,146.73 28% .....	321.08	321.08
Normal 6% tax .....	1,781.08	1,781.08
487.11 .....	487.11	487.11
10—Total income tax .....	2,268.19	2,268.19
Net victory tax .....	271.41	301.57
16— .....	2,539.60	2,569.76
17—1942 tax .....	1,410.17	1,410.17
18—Larger .....	2,539.60	2,569.76
19—Smaller 1,410.17 .....		
75% 1,057.63 .....		
Unforgiven .....	352.54	352.54
20— .....	2,892.14	2,922.30
21—Total payments .....	2,204.28	2,204.28
Unpaid balance .....	687.86	718.02
Paid 3/14/44 .....	481.75	511.60
Paid 3/14/45 .....	170.39	170.39
Balance due .....	\$ 35.72	\$ 36.03
1943 Victory Tax		
Victory Tax net .....	\$10,609.87	\$10,609.87
Additional income .....	66.60	66.60
Specific exemption .....	10,676.47	10,676.47
624.00 .....	624.00	624.00
Victory Tax 5% .....	10,052.47	10,052.47
502.62 .....	502.62	502.62
Victory Tax credit 46% .....	231.21	201.05
	\$ 271.41	\$ 301.57

Admitted November 7, 1949.

Mr. Crouter: And the next return, the 1944 return of Madge Nielson, as Exhibit B.

The Court: Received in evidence as Exhibit B.

(Whereupon the document was marked for identification as Exhibit B and was received in evidence.)

Mr. Crouter: Respondent rests.

The Court: Is there anything further?

Mr. Horrow: Nothing further.

The Court: The original brief will be due December 22nd, 1949, and the reply briefs on January 16, 1950, and the case now stands submitted.

Mr. Horrow: Thank you very much.

Mr. Crouter: I want to thank your Honor for letting me present these cases this morning. I appreciate it very much.

The Court: We will convene at 2:30, to give the Reporter and all of us plenty of time for lunch.

(Whereupon, at 1:10 o'clock p.m., the hearing in the above-entitled matter was concluded.)

---

### Certificate

I, Franklin R. Greene, one of the official reporters of The Tax Court of the United States under its reporting contract, assigned to report certain proceedings during the session of The Tax Court in San Francisco, California, beginning November 7, 1949, do hereby Certify as follows:

That I reported all of the proceedings in the case of Sigvald Nielson, Docket No. 21103, and Madge



Nielson, Docket 21104, Petitioners, on November 7, 1949, before the Honorable Marion J. Harron, Judge of The Tax Court;

That I did well and truly, to the best of my ability, record in Stenotypy fully, completely and accurately all of the proceeding which I was assigned to report, including all colloquy and statements made during the proceedings, and all questions to and answers given by witnesses;

That my stenotype record is full, complete and accurate; and

That the foregoing record is a true, complete and accurate transcript of my stenotype notes of all the proceedings which I reported, and all of the testimony which was taken in the above-entitled cause.

/s/ FRANKLIN R. GREENE,  
Reporter.

Date: Nov. 23, 1949.

Filed T.C.U.S. December 7, 1949.

---

[Title of Tax Court and Cause.]

## MEMORANDUM FINDINGS OF FACT AND OPINION

Harron, Judge:

The Commissioner has determined a deficiency in income tax for the year 1944 in the amount of \$405.74, in Docket No. 21103; and of \$450.45, in Docket No. 21104. These proceedings have been consolidated for trial and opinion.

The only issue is whether the petitioner, Sigvald Nielson, as a member of a law partnership, is entitled to apply Section 107, Internal Revenue Code, so as to include in the time of the rendition of the services the period prior to his admission to a partnership. The respondent has held that the petitioner is not entitled to receive the benefit of section 107, as amended, because he had not been a member of a partnership for 36 months.

### Findings of Fact

The facts have been stipulated. The facts as stipulated are found as facts. The facts necessary for an understanding of the question are as follows:

The petitioners are husband and wife, who have resided in California since their marriage in 1924, to and including the taxable year, 1944. Each petitioner filed a separate return for 1944 with the collector for the first district of California. The returns were made on the cash basis.

Sigvald Nielson, referred to hereinafter as the "petitioner," is a lawyer. He became associated with a law partnership in San Francisco in November, 1935, as an employee of the firm; and ever since that time, he has been associated with the same firm.

On May 1, 1942, the petitioner was admitted into the partnership, and he became entitled to receive, thereafter, a distributive share, each year, of the net profits of the partnership.

From the date of his employment by the firm to January 1, 1939, the petitioner received a fixed salary as compensation for his services. Thereafter, until May 1, 1942, he received during each calendar

year, in addition to a fixed salary, a fixed percentage of the net profits of the partnership, as follows: 0.463 per cent, in 1939; 0.526 per cent, in 1940; 0.631 per cent, in 1941; and 0.631 per cent, from January 1 to April 30, 1942.

After May 1, 1942, when the petitioner became a member of the partnership, the distributive shares of the net profits thereof to which he was entitled, and which he received, were as follows: 2.314 per cent, from May 1 to December 31, 1942; 4.573 per cent, 1943; 3.5 per cent, from January 1 to April 30, 1944; and 5.766 per cent, from May 1 to December 31, 1944.

From August 4, 1935, up to and including May, 1943, a period of ninety-four (94) months, said partnership rendered legal services to The Equitable Life Assurance Society of the United States, hereinafter referred to as "Equitable," in connection with litigation growing out of the imposition by the State of California of a tax on gross premiums from insurance and annuities. These services were entirely distinct and separate from other legal services then being rendered to Equitable by said partnership and after the completion of these special services, said partnership received from Equitable \$43,425 as compensation for said services. Said compensation was received in a lump sum in December, 1944, and no other compensation was ever received by said partnership from Equitable for said services.

For many years past and during all of the years material herein, all fees received for legal services

by said partnership have been pooled in a single fund, which has been first used to pay all expenses. The balance, representing the net profits of the partnership, has been distributed periodically among all of the partners and all of the employees entitled to share therein. The amount of such distributions has been computed on the basis of a quarterly allocation to the profit-sharing employees and a calendar year allocation to the partners of the profits of the partnership, all in accordance with the percentage shares agreed upon by the partners and in effect during the period in which the net profits were received. Each partner and profit-sharing employee has shared in such division of all profits received during any period in which he has been entitled to a share of the partnership profits according to such agreement of the partners; conversely, when a partner or employee has ceased to be such by death or retirement or otherwise, he has not shared in any profit or profits received after the month in which the cessation has occurred.

At all times material herein, said partnership kept its books of account and filed its income tax returns on a calendar year and cash receipts and disbursements basis.

Sigvald Nielson's distributive share of said partnership's net income for the year 1944 included his distributive share in said Equitable fee in the amount of \$2,504.16. One-half of said distributive share, or \$1,252.08, was the community income of Sigvald Nielson and the other one-half was the community income of his wife, Madge Nielson.



In their Federal income tax returns for 1944 petitioners each claimed the benefits of section 107(a) of the Internal Revenue Code and reported therein the additional income taxes attributable to their respective shares of the aforesaid compensation from Equitable, had such shares been included in their gross income ratably over the preceding period of ninety-four (94) months from August, 1935, to May, 1943, during which said services were rendered by said partnership.

The respondent disallowed the petitioners' claims for the benefit of section 107(a) of the Internal Revenue Code because Sigvald Nielson has not been a member of the partnership for a period of 36 months. Respondent held that, therefore, he did not qualify for relief under the provisions of section 107(a).

Following the filing of petitions in each of these proceedings on December 3, 1948, each petitioner, on December 8, 1948, executed a Waiver of Restrictions on Assessment and Collection of Deficiency in Tax on Treasury Department Form 870 for the calendar year 1944 in the amount of \$405.74 for petitioner, Sigvald Nielson, and in the amount of \$450.45 for petitioner, Madge Nielson. Said waivers were filed with the Internal Revenue Agent in Charge, San Francisco, on December 9, 1948, together with a letter of transmittal, which stated, in part, as follows.

In order to stop the running of interest on any liability that may be determined by the Tax Court in these proceedings the taxpayers



wish to permit the assessment and collection of the amounts of the deficiencies determined, but subject to the final determination of the Tax Court in said proceedings. Herewith for that purpose are forms 870 executed by said taxpayers.

The deficiencies involved in these proceedings were duly assessed, and on March 17, 1949, Sigvald Nielson paid the amount of tax so assessed of \$405.74, together with interest in the sum of \$92.89, and Madge Nielson paid the amount of tax so assessed of \$450.45, together with interest in the sum of \$103.13, to the Collector of Internal Revenue at San Francisco, California.

### Opinion

There is no dispute between the parties as to the fact that all of the conditions requisite to the application of section 107, Internal Revenue Code, as it applies to the year 1944, were complied with in these proceedings excepting in one respect, only: The petitioner was not a member of a partnership for the entire period of 36 months. The income in question was a fee that was received by the partnership in 1944. The services for which the fee was paid were rendered over a period of seven or eight years. The compensation for the services was paid in 1944 in a lump sum upon the conclusion of the services. There is no dispute as to the amount of the portion of the fee upon which the petitioners are taxable.

The question turns upon interpretation of section 107, as amended in 1942, and as it applies to the

year 1944. The question is whether section 107 contemplates allocation of compensation for personal services rendered by a partnership over the entire period of rendition of the services, notwithstanding that the taxpayer-partner who shares in the compensation was not a member of the partnership during all of that period.

The same question was presented to this Court for decision in the proceeding of Elder W. Marshall, et al, Docket Nos. 23432 and 23433. The opinion of this Court in those proceedings was promulgated on January 27, 1950. See 14 T.C. No. 12. The respondent made the same determination and argument in Elder W. Marshall, *supra*, as he has made in these proceedings.

In Elder W. Marshall, *supra*, this Court rejected the same contentions which the respondent has advanced here. Our holding in the Marshall case determines the question in these proceedings. It is unnecessary to restate here what we said in the Opinion in the Marshall case. It is held, therefore, that the respondent's determination in these proceedings is erroneous, as we said in Elder W. Marshall, *supra*:

Since it is the status of the recipient of the income in the year of receipt, and not either his status in prior years, Federico Stallforth, 6 T.C. 140, nor the identity of the individual who contributed the services, that is made to govern the application of section 107 in its present form, we are satisfied that under the facts of this proceeding petitioner correctly computed

his tax by use of its provisions.

Decisions will be entered that there are no deficiencies.

Received T.C.U.S. January 19, 1950.

[Seal]: Entered January 26, 1950.

---

The Tax Court of the United States  
Washington

Docket No. 21103

SIGVALD NIELSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered on January 26, 1950, it is

Ordered and Decided: That there is no deficiency in income tax, and that there is overpayment of tax for the year 1944 in the amount of \$405.74, together with interest in the sum of \$92.89, which amounts were paid after the mailing of the notice of deficiency. (Section 322(d), Internal Revenue Code.)

[Seal]: /s/ MARION J. HARRON,  
Judge.

Entered: Jan. 27, 1950.

Served Jan. 27, 1950.

The Tax Court of the United States  
Washington

Docket No. 21104

MADGE NIELSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered on January 26, 1950, it is

Ordered and Decided: That there is no deficiency in income tax, and that there is overpayment of tax for the year 1944 in the amount of \$450.45, together with interest in the sum of \$103.13, which amounts were paid after the mailing of the notice of deficiency. (Section 322(d), Internal Revenue Code.)

/s/ MARION J. HARRON,  
Judge.

Entered January 27, 1950.

Served January 27, 1950.



In the United States Court of Appeals  
for the Ninth Circuit

T. C. Docket No. 21103

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,

vs.

SIGVALD NIELSON,

Respondent on Review.

### PETITION FOR REVIEW

To the Honorable Judges of the United States Court  
of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on January 27, 1950 "That there is no deficiency in income tax and that there is overpayment of tax for the year 1944 in the amount of \$405.74" in respect of the Federal income tax liability of Sigvald Nielson, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Sigvald Nielson, is a resident of Palo Alto, California, having a place of business at 225 Bush Street, San Francisco, California, and filed his Federal income tax return for the calendar year 1944, the taxable year here involved, with the Collector of Internal Revenue for



the First District of California whose office is located in San Francisco, California, and within the judicial circuit of the United States Court of Appeals for the Ninth Circuit.

### Nature of Controversy

The issue which was presented to the Tax Court for its consideration and which was decided by that Court contrary to the Commissioner's determination is whether the taxpayer, Sigvald Nielson, is entitled to the benefits of Section 107(a) of the Internal Revenue Code relating to the taxability of compensation received for personal services covering a period of 36 calendar months or more where such compensation is received or accrued in one taxable year. The taxpayer, Sigvald Nielson, is a lawyer. He became associated with a law partnership in San Francisco in November, 1935, as an employee of the firm and has been associated with such firm since that time. The taxpayer received a fixed salary as compensation for his services from the date of his employment until January 1, 1939, and thereafter, until May 1, 1942, he received during each calendar year, in addition to his salary, a fixed percentage of the net profits of the partnership. The taxpayer was admitted into the partnership as a partner on May 1, 1942, and then became entitled to receive distributive shares of the net profits of the partnership. During December of the taxable year 1944 the partnership received in a lump sum compensation for legal services which it had rendered to The Equitable Life Assurance Society of the United States in connection with litigation

growing out of the imposition by the State of California of a tax on gross premiums from insurance and annuities. The services so rendered had occurred over a period of 94 months from August 4, 1935, to and including May, 1943. In reporting in his Federal income tax return for the year 1944 his one-half community share of his distributive portion of the partnership profits, the taxpayer claimed as to that portion of such distributive share which reflected his distributive portion in the fee received from The Equitable Life Assurance Society of the United States, to wit \$2,504.16, the benefits of Section 107(a) of the Internal Revenue Code; that is to say, he reported in his return only the additional income taxes attributable to the community half of his share of the Equitable compensation had such share been included in his gross income ratably over the preceding period of 94 months from August, 1935, to May, 1943, during which the services were rendered by the partnership. The Commissioner held that the taxpayer did not qualify for relief under the provisions of Section 107(a), for the reason that he had not been a member of the partnership for a period of 36 months when the compensation was received, and disallowed the claim for the benefit of that section. The Tax Court disagreed with the Commissioner's determination and allowed the taxpayer to compute his Federal income tax liability for the year 1944, in so far as his community share of the distributive portion in said Equitable fee is

concerned, by the application of Section 107(a) of the Internal Revenue Code.

/s/ THERON L. CAUDLE,  
Assistant Attorney General.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Received and Filed T.C.U.S., April 21, 1950.

---

[Title of Court of Appeals and Cause.]

NOTICE OF FILING OF PETITION  
FOR REVIEW

To: Mr. Sigvald Nielson,  
1620 Cowper Street,  
Palo Alto, California.  
Business Address:  
225 Bush Street, San Francisco, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 21st day of April, 1950, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 21st day of April, 1950.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review, is hereby acknowledged this 24th day of April, 1950.

/s/ SIGVALD NIELSON,

Respondent on Review.

Received and Filed T.C.U.S., May 5, 1950.

---

[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To: Harry R. Horrow, Esquire, 225 Bush Street,  
San Francisco, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 21st day of April, 1950, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 21st day of April, 1950.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.



Personal service of the above and foregoing notice, together with a copy of the petition for review, is hereby acknowledged this 24th day of April, 1950.

/s/ HARRY R. HORROW,  
Counsel for Respondent on  
Review.

Received and Filed, T.C.U.S., May 5, 1950.

---

[Title of Court of Appeals and Cause.]

### PETITION FOR REVIEW

To the Honorable Judges of the United States Court  
of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on January 27, 1950, "That there is no deficiency in income tax and that there is overpayment of tax for the year 1944 in the amount of \$450.45" in respect of the Federal income tax liability of Madge Nielson, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Madge Nielson, is a resident of Palo Alto, California, and filed her Federal income tax return for the calendar year 1944, the taxable year here involved, with the Collector of Internal Revenue for the First District of California whose office is located in San Fran-



cisco, California, and within the judicial circuit of the United States Court of Appeals for the Ninth Circuit.

### Nature of Controversy

The issue which was presented to the Tax Court for its consideration and which was decided by that Court contrary to the Commissioner's determination is whether the taxpayer, Madge Nielson, and her husband, Sigvald Nielson, are entitled to the benefits of Section 107(a) of the Internal Revenue Code relating to the taxability of compensation received for personal services covering a period of 36 calendar months or more where such compensation is received or accrued in one taxable year. The taxpayer's husband, Sigvald Nielson, is a lawyer. He became associated with a law partnership in San Francisco in November, 1935, as an employee of the firm and has been associated with such firm since that time. The taxpayer's husband received a fixed salary as compensation for his services from the date of his employment until January 1, 1939, and thereafter, until May 1, 1942, he received during each calendar year, in addition to his salary, a fixed percentage of the net profits of the partnership. The taxpayer's husband was admitted into the partnership as a partner on May 1, 1942, and then became entitled to receive distributive shares of the net profits of the partnership. During December of the taxable year 1944 the partnership received in a lump sum compensation for legal services which it had rendered to The Equitable Life As-

insurance Society of the United States in connection with litigation growing out of the imposition by the State of California of a tax on gross premiums from insurance and annuities. The services so rendered had occurred over a period of 94 months from August 4, 1935, to and including May, 1943. In reporting in their separate Federal income tax returns for the year 1944 their respective one-half community shares of his distributive portion of the partnership profits, the taxpayer and her husband claimed as to that portion of such distributive share which reflected his distributive portion in the fee received from The Equitable Life Assurance Society of the United States, to wit \$2,504.16, the benefits of Section 107(a) of the Internal Revenue Code; that is to say, the taxpayer and her husband each reported in his or her return only the additional income taxes attributable to the respective community halves of his share of the Equitable compensation had such share been included in their gross incomes ratably over the preceding period of 94 months from August, 1935, to May, 1943, during which the services were rendered by the partnership. The Commissioner held that the taxpayer's husband did not qualify for relief under the provisions of Section 107(a), for the reason that he had not been a member of the partnership for a period of 36 months when the compensation was received, and disallowed the claim for the benefit of that section. The Tax Court disagreed with the Commission's determination and allowed the tax-

payer and her husband to compute their respective Federal income tax liabilities for the year 1944, in so far as his share of the distributive portion in said Equitable fee is concerned, by the application of Section 107(a) of the Internal Revenue Code.

/s/ THERON L. CAUDLE,

Assistant Attorney General.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Received and Filed T.C.U.S., April 21, 1950.

---

[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To: Mrs. Madge Nielson,  
1620 Cowper Street,  
Palo Alto, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 21st day of April, 1950, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 21st day of April, 1950.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review, is hereby acknowledged this 25th day of April, 1950.

/s/ MADGE NIELSON,  
Respondent on Review.

Received and Filed, T.C.U.S., May 5, 1950.

---

[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To: Harry R. Horrow, Esquire,  
225 Bush Street,  
San Francisco, California:

You are hereby notified that the Commissioner of Internal Revenue did, on the 21st day of April, 1950, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 21st day of April, 1950.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

Personal service of the above and foregoing notice, together with a copy of the petition for re-



view, is hereby acknowledged, this 24th day of April, 1950.

/s/ HARRY R. HORROW,

Counsel for Respondent on  
Review.

Received and Filed T.C.U.S., May 5, 1950.

---

[Title of Court of Appeals and Cause.]

### MOTION

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled causes, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and moves that the time within which to complete and transmit the record on review be extended from May 31, 1950, to and including July 20, 1950, and for cause respectfully represents:

That the question as to whether the petitions for review will be further prosecuted is under consideration and therefore additional time is required in order to complete this consideration and also if necessary to properly stipulate the omissions, if any, from the record on review, to prepare



the record and to transmit it to the Court of Appeals.

Wherefore, it is prayed that this motion be granted.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

J. M. MORAWSKI,  
Special Attorney,  
Bureau of Internal Revenue.

Received and Filed T.C.U.S., May 24, 1950.

---

The Tax Court of the United States  
Washington

Docket Nos. 21103, 21104

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

SIGVALD NIELSON, MADGE NIELSON,  
Respondents.

### ORDER ENLARGING TIME

Upon motion of counsel for petitioner, it is

Ordered that the time for preparation, transmission and delivery of the record sur petition for review of the above-entitled proceeding in the United

States Court of Appeals for the Ninth Circuit  
is extended to July 20, 1950.

[Seal]:     /s/ JOHN W. KERN,  
                    Presiding Judge.

Dated:   Washington, D. C., May 24, 1950.

Served May 26, 1950.

---

United States Court of Appeals  
for the Ninth Circuit

Docket Nos. 21103, 21104

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,

vs.

SIGVALD NIELSON, MADGE NIELSON,  
Respondents on Review.

### STATEMENT OF POINTS

Comes Now the petitioner on review herein and  
makes this concise statement of points on which he  
intends to rely on the review herein, to wit:

The Tax Court of the United States erred:

1. In holding that the income in question, which  
was received by Sigvald Nielson as his share of a  
certain partnership fee received in 1944, is subject  
to tax under the provisions of Section 107, Internal  
Revenue Code, on the authority of the Tax Court's  
decision in *Elder W. Marshall, et al.*, 14 T.C. No. 12.

2. In failing to uphold the Commissioner's de-

termination that the income in question was taxable as ordinary income in the year received, without the benefits of the relief provided by Section 107, Internal Revenue Code, since Sigvald Nielson's membership in the partnership was less than 36 calendar months.

3. In holding that there are overpayments in income tax for the year 1944 in the amount of \$405.74 in the case of Sigvald Nielson and \$450.45 in the case of Madge Nielson; and in failing to uphold the deficiencies determined by the Commissioner in the amount of \$405.74 in the case of Sigvald Nielson and \$450.45 in the case of Madge Nielson.

4. In that its decisions are not supported by the evidence.

5. In that its decisions are contrary to law and regulations.

/s/ THERON L. CAUDLE,  
Assistant Attorney General.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Service of a copy of the within statement of points is hereby admitted this 7th day of June, 1950.

/s/ HARRY R. HORROW,  
Attorney for Respondents on Review.

Received and Filed T.C.U.S., July 3, 1950.

[Title of Court of Appeals and Cause.]

STATEMENT RE DIMINUTION OF RECORD

To the Clerk of The Tax Court of the United States:

Pursuant to the provisions of Rule 75(o) of the Federal Rules of Civil Procedure adopted by the United States Court of Appeals for the Ninth Circuit, you are hereby notified that the petitioner on review will not exclude or omit any part of the record in these proceedings which were consolidated for hearing and opinion by the Tax Court.

/s/ THERON L. CAUDLE,  
Assistant Attorney General.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Service of a copy of this Statement Re Diminution of Record is hereby acknowledged this 7th day of June, 1950.

/s/ HARRY R. HORROW,  
Attorney for Respondents on Review.

Received and Filed T.C.U.S., July 3, 1950.

The Tax Court of The United States  
Washington

Docket Nos. 21103, 21104

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,

vs.

SIGVALD NIELSON, MADGE NIELSON,  
Respondents on Review.

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 31, inclusive, constitute and are all of the papers and proceedings on file in my office as the original and complete record in the proceedings before The Tax Court of the United States entitled, "Sigvald Nielson, Petitioner, vs. Commissioner of Internal Revenue, Respondent," Docket No. 21103 and "Madge Nielson, Petitioner, vs. Commissioner of Internal Revenue, Respondent," Docket No. 21104, and in which the respondents in The Tax Court proceedings have initiated appeals as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United





In the United States Court of Appeals  
for the Ninth Circuit

No. 12609

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

SIGVALD NIELSON,

Respondent.

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner.

vs.

MADGE NIELSON,

Respondent.

NOTICE AS TO STATEMENT OF POINTS TO  
BE RELIED UPON AND AS TO PARTS  
OF RECORD TO BE PRINTED.

Pursuant to Rule 19(6) of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit, notice is hereby given by the Commissioner of Internal Revenue, petitioner on review herein, as follows:

1. The Commissioner hereby adopts, as the Statement of Points upon which he intends to rely on the present review, the Statement of Points heretofore filed and served and included in the certified typewritten transcript of record filed in this Court in this cause; and

2. The Commissioner hereby designates for

printing the entire transcript of record filed in this Court in this cause.

Dated this 27th day of July, 1950.

/s/ THERON LAMAR CAUDLE,  
Assistant Attorney General, Counsel for Petitioner  
on Review.

[Endorsed]: Filed July 31, 1950.

---

[Title of Court of Appeals and Cause.]

## STIPULATION AS TO PARTS OF THE RECORD TO BE PRINTED

1. Pursuant to Rule 19(6) of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit, it is hereby stipulated and agreed by and between the parties to this cause, through their respective counsel, that, in lieu of the parts of the record heretofore designated for printing by the Petitioner on Review by his notice dated July 27, 1950, heretofore served and filed in this cause in this Court, only the following parts of the transcript of record filed in this Court in this cause be printed, as material to the consideration of the review:

	Document No.*
(a) Docket Entries in T.C. Docket #21103 .....	1
(b) Docket Entries in T.C. Docket #21104 .....	2
(c) Petition in T.C. Docket #21103 .....	3
(d) Answer in T.C. Docket No. 21103 .....	5
(e) Joint Motion for Consolidation of Proceedings in T.C. Docket Nos. 21103 and 21104 .....	16

---

\* This refers to the number given to the respective parts of the transcript of record on review by the Clerk of the Tax Court in transmitting it to the Clerk of the Court of Appeals.

(f) Stipulation of Facts in T.C. Docket Nos. 21103 and 21104 .....	17
(g) Official Report of Proceedings before the Tax Court .....	18
(h) Respondent's Exhibit A (part of document #19..	19
(i) Memorandum Findings of Fact and Opinion in T.C. Docket Nos. 21103 and 21104 .....	23
(j) Decision in T.C. Docket #21103 .....	24
(k) Decision in T.C. Docket #21104 .....	25
(l) Petition for Review and Proofs of Service in T.C. Docket #21103 .....	26
(m) Petition for Review and Proofs of Service in T.C. Docket #21104 .....	27
(n) Motion for Extension of Time to Transmit and Deliver Record in T.C. Docket Nos. 21103 and 21104 .....	28
(o) Order Enlarging Time in T.C. Docket Nos. 21103 and 21104 .....	29
(p) Statement of Points in T.C. Docket Nos. 21103 and 21104 .....	30
(q) Statement re Diminution of Record in T.C. Docket Nos. 21103 and 21104 .....	31
(r) Certificate and Seal .....	...

2. It is further agreed that, except for immaterial minor differences, the petition, with Exhibit A thereto, and the answer in the case of Madge Nielson v. Commission, T. C. Docket No. 21104, are identical to those in the case of Sigvald Nielson v. Commissioner, T. C. Docket No. 21103, and it is therefore agreed that they be omitted from the printed record. It is further agreed that Respondent's Exhibit B is a copy of the income tax return of Madge Nielson for the year 1944, and that it, except for immaterial minor differences, is identical to respondent's Exhibit A, the income tax return for that year of Sigvald Nielson, and it is therefore agreed that it be omitted from the printed record.

3. It is further agreed that there also be in-



cluded in the printed record the following documents filed in this Court:

(a) Notice as to Statement of Points, etc., filed by Petitioner on Review.

(b) This Stipulation.

/s/ THERON LAMAR CAUDLE,  
Assistant Attorney General, Counsel for Petitioner  
on Review.

/s/ JOSEPH L. SELIGMAN, JR.  
Counsel for Respondents on  
Review.

Dated this 17th day of August, 1950.

[Endorsed]: Filed August 2, 1950.





